

REMARKS

Applicant respectfully traverses rejections under 35 U.S.C. § 103(a) based on unpatentability over Singer (GB '884) and based on unpatentability under 35 U.S.C. § 103(a) over Singer in view of Draghetti '060.

These traversals are primarily based on the Examiner's misconstruing of Singer's disclosure relative to the claimed invention as recited in the new claims 44 and 45. Applicant notes that Applicant's claims are directed to a "hinge-lid box for a cigarette group..."

New claims 44 and 45 relate - as do the previous claims - to the packs pursuant to Fig. 1 to Fig. 7 (claim 44) on one hand, and to the pack pursuant to Fig. 8 to Fig. 10 (claim 45) on the other. The claims contain all features of these two pack forms. In particular, these features can be taken from the blank pursuant to Fig. 5 and Fig. 10.

Claims 44 and 45 do not raise a "new issue" because they recite the limitations of the previous claims 34 to 43.

By virtue of the novel pack construction pursuant to the features e) to g) and f) to h), respectively, it is possible to create a free space or chamber 50 above the cigarette block, as the pack contents, which is determined by clearly rounded or beveled contours. The creation of a rounded or beveled end wall 21 with the help of correspondingly extended lid side tabs 30 (or box side tabs 29) results in a pack form which is essentially novel in its constructive design for hinge-lid packs. The prior art fails to provide any suggestion of this development.

The references cited by the Examiner cannot be compared in their stated object and proposed solution to the features of the pack according to the presently claimed invention.

The newly introduced GB 2 175 884 to Singer relates to a standard type of cigarette pack, namely a hinge-lid pack. According to the exemplary embodiment of Fig. 5, upper and lower transverse edges extending between the front side and rear side of the pack are rounded.

According to the Examiner, a chamber is created in the upper region of the lid in conjunction with the rounded transverse edges 64a, 64b of Fig. 5. An illustration of this view (Fig. 5) appears on page 2 of the Office Action. It shows a “chamber,” represented by dotted lines, which is actually not provided and which cannot be assumed based on the overall circumstances of Singer’s disclosure. Singer contains no indication whatsoever with respect to the formation of a “chamber” in the upper region of the lid.

Singer relates to a different problem than that of the present invention: Singer recognizes that, due to the rigidity and stability of their packaging material, cigarette packs of the shown type (“flip-top pack”) have relatively sharp and hard edges (page, 1, lines 22/25 of the Singer specification). The object of the Singer pack design is therefore a (partial) elimination of sharp-edged corners of a hinge-lid pack. Here it is stated generally that edges between the end wall and base wall, on one hand, and the side wall, on the other, “are blunt” (page 1, line 32). Accordingly, various solutions are presented relating to the configuration of the transverse edges, including those referred to as “rounded corners” (line 37).

Based on the further details that a person skilled in the art can take from Singer and due to the general state of professional expertise concerning the design of hinge-lid cigarette packs, the person skilled in the art will conclude that the packs taught by Singer exclude an upper (or lower) chamber. The illustrated packs themselves as well as the blanks, for example the pack blank shown in Fig. 4, provide the person skilled in the art with the clear information that the pack - apart from the transverse edges - has a standard configuration and also corresponds in its

dimensions to a conventional pack of this type in which the pack contents, namely the cigarette block, completely fills up the pack's interior space. In the Singer pack the cigarette block (also) extends up to the end wall 50 of the lid.

Hinge-lid cigarette packs having rounded pack edges are also known in other embodiments. Reference is made to US 4 753 383 to Focke. This hinge-lid pack is provided with rounded upright pack edges (Fig. 7). At the same time it can be seen that the contents of the pack correspond to the standard configuration of a conventionally formed cigarette group. The "rounded pack edges" cannot be compared to the rounded faces or sub-sections of an end wall corresponding to those of the pack of the present invention.

If the blank shown in Fig. 4 of US '383 to Focke is compared to the embodiment of the blank likewise shown in Fig. 4 of Singer, it can be seen by the relative dimensions that the Singer pack exhibits the standard dimensions of a conventional pack. This can be seen in particular in the proportions of the faces 12/40, 15/48, 14/42, 20/42' and 21/50. The Singer pack is filled up by the pack contents along its full height, i.e., with no formation of a chamber.

This can also be confirmed by US 3 944 066 to Niepmann. Here the proportions of the blank in Fig. 1, in particular the faces 2a/42, 5/42' and 6/50 also confirm that the conventional dimensional ratios common to hinge-lid packs have been chosen. As can be seen from Fig. 2 of US '066, the pack contents 17, namely the cigarette block, extend along the full height and is not capable of creating space for a chamber.

With respect to Singer, the following can be stated:

Singer demonstrates that no chamber is provided in the upper and/or lower region of the pack and that such a chamber cannot be deduced from the overall circumstances set forth in the specification's description and drawings;

No reference can be found in Singer with respect to “an end wall or base wall of arcuate configuration”. In Singer the walls 48, 50 are continuously planar with edge roundings at the ends.

These differences prove that the cigarette pack of the claimed invention is not only novel but that it also is nonobvious.

Neither can any anticipation or suggestion of previous claims 35 and 43 be deduced from a combined view of Singer and US 5 833 060 to Draghetti.

It should first be kept in mind that Singer refers to “so-called flip-top packs”. This is a standard designation for hinge-lid packs which for technical reasons have a collar. Even if Singer does not show or describe a collar, it must be assumed that the pack has a collar.

Draghetti is a further example for a cigarette pack of this type having beveled or rounded pack edges (the latter shown in Fig. 4 to Fig. 6). Draghetti also relates to the rounding or beveling of edges without influencing the pack contents. The drawing in Fig. 5 shows that the usual pack contents extend to the region of the lid end wall. Draghetti serves as an example of hinge-lid packs with a collar. Otherwise, the Draghetti pack can only confuse the person skilled in the art if the Singer pack with rounded portions on its transverse edges is taken into consideration. A combined view of both references not only fails to lead to the pack according to the claimed invention but actually teaches away from it. Draghetti is further proof that the claimed invention relates to a different type of cigarette pack.

Applicant has explained in great detail why Examiner Cheung’s reliance on Singer and Draghetti is improper in reaching the conclusion of obviousness of the claimed subject matter. In this regard, Applicant reminds Examiner Cheung also of the impropriety of using hindsight gainful knowledge of Applicant’s own disclosure to find obviousness. In this regard, Applicant

particularly notes the Examiner's proposed modification of Singer with Draghetti's disclosure to find obviousness in the claimed subject matter.

Applicant respectfully submits that there is nothing indefinite about the conjunction "and/or".

In summary, then, and for the reasons advanced above, Applicant respectfully requests the Examiner to reconsider and withdraw the rejections under 35 U.S.C. § 103(a) and to find the application to be in condition for allowance with claims 44 and 45. As noted above, and in view of the previously presented claims, Applicant respectfully submits that new claims 44 and 45 **do not raise a new issue which would require further consideration and/or search**. Applicant also notes that an Examiner can allow an application (even after final action) anytime the application is placed in condition for allowance. In this regard, if Examiner Cheung feels that the present application is not in condition for allowance with claims 44 and 45, Applicant respectfully requests Examiner Cheung **to call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.

Applicant files concurrently herewith a Petition (with fee) for Extension of Time of one month.

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: January 4, 2010

Respectfully submitted,



John H. Mion
Registration No. 18,879